



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8**

1595 Wynkoop Street
DENVER, CO 80202-1129
Phone 800-227-8917
<http://www.epa.gov/region08>

SEP 02 2014

Ref: 8ENF-RC

**SPECIAL NOTICE LETTER
URGENT LEGAL MATTER
PROMPT REPLY NECESSARY
CERTIFIED MAIL: RETURN RECEIPT REQUESTED
7008 3230 0003 0725 8525**

Matthew Rose
Chairman
BNSF Railway Company
2650 Lou Menk Drive
Ft. Worth, TX 76131-2830

Re: Special Notice Letter for the Smurfit Stone Mill Site
Missoula, Missoula County, Montana

Dear Mr. Rose:

This letter follows the general notice letter that the U.S. Environmental Protection Agency (EPA) sent to the BNSF Railway Company (BNSF) on May 2, 2014, in connection with the Smurfit Stone Mill Site (Site), located near Missoula, Montana. In that letter, the EPA notified BNSF of its potential responsibility under Section 107(a) of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA" or "Superfund"), 42 U.S.C. § 9607(a) for the cleanup of the Site, including all costs incurred by the EPA in responding to releases at the Site. The EPA is now contacting BNSF in an attempt to resolve its responsibility at the Site.

Background

Based on an extensive review of records related to the release and/or disposal of hazardous substances at the Site, the EPA identified BNSF as a potentially responsible party (PRP) that contributed hazardous substances to the Site. Under the federal Superfund law, BNSF and the other PRPs at the Site are responsible for the costs of cleaning up the Site. The EPA has plans to perform a remedial investigation and feasibility study (RI/FS) at the Site in order to identify locations where hazardous waste is located. The final RI/FS report will identify various response actions needed to address hazardous waste at the Site.

Special Notice and Negotiation Moratorium

The EPA has determined that use of the special notice procedures set forth in Section 122(e) of CERCLA, 42 U.S.C. § 9622(e) may facilitate a settlement between BNSF, the other PRPs, and the EPA for performance of a RI/FS at the Site. A remedial investigation (RI) identifies site characteristics and defines the nature and extent of soil, air, surface water and groundwater contamination at the Site and the risks posed by the Site. A feasibility study (FS) evaluates different clean-up options for the Site.

Under Section 122(e), this letter triggers a sixty (60)-day moratorium on certain EPA response activities at the Site. During this 60-day period, BNSF and the other PRPs are invited to participate in formal negotiations with the EPA in an effort to reach a settlement to conduct or finance the RI/FS. The 60-day negotiation period ends 60 days after the receipt of this letter. The 60-day negotiation moratorium will be extended for an additional thirty (30) days if PRPs provide the EPA with a "good faith offer" to conduct or finance the RI/FS. Under this 90-day negotiation moratorium, negotiations will conclude 90 days after the receipt of this letter. If settlement is reached between the EPA and the PRPs within the 90-day negotiation moratorium, the settlement will be embodied in an administrative order on consent (AOC) for RI/FS.

Good Faith Offer

A proposed AOC and Statement of Work (SOW) is enclosed to assist BNSF in developing a "good faith offer." As indicated, the 60-day negotiation moratorium triggered by this letter is extended for 30 days if the PRPs submit a "good faith offer" to the EPA. A "good faith offer" to conduct or finance the RI/FS is a written proposal that demonstrates the PRPs' qualifications and willingness to conduct or finance the RI/FS and includes the following elements:

- A statement of willingness by the PRPs to conduct or finance an RI/FS that is consistent with EPA's Statement of Work and draft AOC and provides a sufficient basis for further negotiations;

- A paragraph-by-paragraph response to the EPA's Statement of Work and draft AOC;

- A detailed description of the work plan identifying how the PRPs plan to proceed;

- A demonstration of the PRPs' technical capability to carry out the RI/FS, including the identification of the firm(s) that may actually conduct the work or a description of the process they will use to select the firm(s);

- A demonstration of the PRPs' capability to finance the RI/FS;

- A statement of willingness by the PRPs to reimburse the EPA for costs incurred in overseeing the PRPs' conduct of the RI/FS; and

- The name, address, and phone number of the party(ies) or steering committee member(s) who will represent the PRPs in negotiations.

Demand for Reimbursement of Costs

With this letter, the EPA demands that you reimburse the EPA for its costs incurred to date, and encourages you to voluntarily negotiate an AOC in which BNSF and other PRPs agree to perform the RI/FS.

In accordance with Section 104 of CERCLA, 42 U.S.C. § 9604, the EPA has already taken certain response actions and incurred certain costs in response to conditions at the Site. These response actions include site investigations and a removal assessment at the Site under the authority of the Superfund Program. On August 20, 2012, the EPA produced an "Analytical Results Report for a Combined Site Inspection and Removal Assessment" for the Site. Field work and sampling activities were conducted on surface and subsurface soil and sediment and on surface water and groundwater.

The EPA is seeking to recover from BNSF and other PRPs at the Site, its response costs and all the interest authorized to be recovered under Section 107(a) of CERCLA. To date, the response costs for the Site (from 10/01/1980-03/31/2013) are approximately \$673,809.

Under Section 107(a) of CERCLA, the EPA hereby makes a demand for payment from BNSF and other PRPs for the above amount plus all interest authorized to be recovered under Section 107(a). A summary of these costs is enclosed as Attachment A.

Some or all of the costs associated with this notice may be covered by current or past insurance policies issued to BNSF. Most insurance policies will require that the company notify its carrier(s) of a claim against it in a timely manner. To evaluate whether BNSF should notify its insurance carrier(s) of this demand, BNSF may wish to review current and past policies, beginning with the date of BNSF's first contact with the Smurfit Stone Mill Site, up to the present. Coverage depends on many factors, such as the language of the particular policy and state law.

In the event that BNSF files for protection in a bankruptcy court, it must include the EPA as creditor, because the EPA has a potential claim against BNSF. The EPA reserves the right to file a proof of claim or application for reimbursement of administrative expenses.

PRP Steering Committee

To assist PRPs in negotiating with the EPA concerning this matter, the EPA is attaching to this letter a list of the names and addresses of other PRPs to whom it is sending this Notice.

The EPA recommends that all PRPs meet to select a steering committee responsible for representing the group's interests. The EPA recognizes that the allocation of responsibility among PRPs may be difficult. If PRPs are unable to reach consensus among themselves, we encourage the use of the services of a neutral third party to help allocate responsibility. Third parties are available to facilitate negotiations. At the PRPs' request, the EPA will provide a list of experienced third-party mediators, or help arrange for a mediator.

We and our staff look forward to working with you during the coming months.

Sincerely,

Signature page
was inadvertently
not copied from
original.

Kelcey Land, Director
RCRA/CERCLA Technical Enforcement Program
Office of Enforcement, Compliance,
and Environmental Justice

Andrea Madigan
Supervisory Attorney
Legal Enforcement Program
Office of Enforcement, Compliance
and Environmental Justice

Enclosures

cc: Montana Governor Steve Bollock
Robert Collins, MT NR Trustee
Robert Stewart, DOI
Amelia Piggott, 8ENF-L
Sara Sparks, 8MO
Rob Parker, 8EPR-AR
Sharon Abendschan, 8ENF-RC
Dianna Lim, 8EPR-PS
Mark Engdahl, BNSF
Brooke Kuhl, BNSF



List of PRPs Receiving Special Notice Letters
Regarding Superfund Liability for the Smurfit Stone Site

| PRP | Legal Counsel |
|--|---|
| Rock Tenn James Rubright Chairman and Chief Executive Officer 504 Thrasher Street Norcross, GA 30071 | Rock Tenn Roy Cobb, Esq. Senior Environmental Counsel Six City Place Drive Creve Coeur, Missouri 63141 314-656-5364 |
| Rock Tenn Nina E. Butler Senior Vice President & Environmental Counsel 504 Thrasher Street Norcross, GA 30071 770-638-7597 | |
| Montana Rail Link Thomas Walsh, President 101 International Drive Missoula, MT 59808 406-523-1434 | Washington Corporations Karl M. Swanson 101 International Drive Missoula, MT 59808 406-523-1399 |
| BNSF Railway Company Matthew Rose Chairman and Chief 2650 Lou Menk Drive Ft. Worth, TX 76131-2830 | BNSF Railway Company Brooke Kuhl General Attorney 201 West Railroad Street Missoula, MT 59801 406-543-0019 |
| BNSF Railway Company Mark Engdahl Manager of Environmental Remediation 800 North Lost Chance Gulch, Suite 101 Helena, MT 59601 | |
| M2Green Redevelopment, LLC Raymond S. Stillwell President and General Counsel 601 East 3 rd Street, Suite 302 Alton, IL 62002 618-465-7277 | Tempkin, Wielga, & Hardt, LLP Elizabeth Tempkin, Esq. Ryan Skylar, Esq. 1900 Wazee Street, Suite 303 Denver, CO 80211 303-292-4922 |

List of PRPs Receiving Special Notice Letters
Regarding Superfund Liability for the Smurfit Stone Site

PRP

International Paper
John Vincent Faraci
Chairman CEO
6400 Poplar Avenue
Memphis, TN 38197

Legal Counsel

International Paper
Brian E. Heim, Chief Counsel
Legal Department
6400 Poplar Avenue
Memphis, TN 38197

Certified By Financial Management Office

Itemized Cost Summary

SMURFIT STONE MILL, MISSOULA, MT SITE ID = A8 04

FULL COST SUMMARY REPORT - ALL INCLUSIVE - (CRP# 164516)

COSTS FROM 10/01/1980 THROUGH 03/31/2013

| | |
|--|----------------------------|
| REGIONAL PAYROLL COSTS | \$46,006.58 |
| HEADQUARTERS PAYROLL COSTS | \$1,476.63 |
| REGIONAL TRAVEL COSTS | \$5,048.78 |
| ACCEPTANCE CONTRACTS | |
| CHEMTECH CONSULTING GROUP, INC. (EPW09038) | \$5,957.25 |
| ENFORCEMENT SUPPORT SERVICES (ESS) | |
| TOEROEK ASSOC. INC. (EPR80910) | \$22,550.80 |
| SUPERFUND TECHNICAL ASSIST RESPONSE (ST3) | |
| URS OPERATING SERVICES INC. (EPW05050) | \$312,686.86 |
| TECHNICAL AND ANALYTICAL SUPPORT SERVICES | |
| COMPUTER SCIENCES CORPORATION (EPW10016) | \$42,723.26 |
| TECHNICAL SERVICES AND SUPPORT (TSSO) | |
| COMPUTER SCIENCES CORP (EPW06046) | \$1,990.52 |
| CONTRACT LAB PROGRAM (CLP) COSTS | |
| FINANCIAL COST SUMMARY | \$43,643.53 |
| EPA INDIRECT COSTS | \$191,724.93 |
| Total Site Costs: | <u><u>\$673,809.14</u></u> |

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

JL

SEP 03 2014

Matthew Rose
Chairman
BNSF Railway Company
2650 Lou Menk Drive
Ft. Worth, TX 76131-2830 **I**

2. Article Number
(Transfer from service label)

7008 3230 0003 0725 8525

PS Form 3811, February 2004

Domestic Return Receipt

102595-02-M-1540

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

BNSF Rwy CO
AOB/GL MAIL ROOM

B. Received by (Printed Name)

FT WORTH, TX

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type.

- ☐ Certified Mail ☐ Express Mail
- ☐ Registered ☐ Return Receipt for Merchandise
- ☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes